



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[CG Docket No. 05-231; FCC 14-206]**

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc.  
Petition for Rulemaking

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission issues a Second Further Notice of Proposed Rulemaking seeking additional comment on several issues related to matters raised in the Commission's Closed Captioning Quality Order. These issues include whether the Commission should require video programmers to file contact information and certifications of captioning compliance with the Commission and whether other means would make programmer contact information and certifications more widely available.

**DATES:** Comments are due **[INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 05-231, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 05-231.
- **Paper filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to

experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, (202) 418-2235, email: [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov); or Caitlin Vogus, Consumer and Governmental Affairs Bureau, Disability Rights Office, (202) 418-1264, email: [Caitlin.Vogus@fcc.gov](mailto:Caitlin.Vogus@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Further Notice of Proposed Rulemaking, document FCC 14-206, adopted December 12, 2014, released December 15, 2014. The full text of document FCC 14-206, and any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-

3160, fax: (202) 488-5563, or Internet: [www.bcpiweb.com](http://www.bcpiweb.com). Document FCC 14-206 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/encyclopedia/disability-rights-office-headlines>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

Document FCC 14-206 seeks comment on potential revised information collection requirements. If the Commission adopts any revised information collection requirements, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

## **SYNOPSIS**

1. In FCC 14-206, the Commission seeks additional comment on several issues related to matter raised in the Commission’s February 24, 2014 Further Notice of Proposed Rulemaking on closed captioning. Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking, CG Docket No. 05-231, Further Notice of Proposed Rulemaking (Further Notice); published at 79 FR 17093, March 27, 2014. The Commission invites comment on requiring video programmers to file contact information and certifications of captioning compliance with the Commission. The Commission also invites comment on whether any other means would make programmer contact information and certifications more widely available to consumers, video programming distributors (VPDs), and other interested parties. Further, the Commission seeks comment on whether these potential rule modifications alter previous Commission positions and whether there are justifications for the Commission changing course at this time.

2. The Commission invites comment on whether to require video programmers to file contact information with the Commission for inclusion in the registry of VPD contact information (VPD Registry) or a separate database, if the Commission were to decide to extend to video programmers some of the responsibilities for compliance with its closed captioning rules and for the resolution of captioning complaints. The Commission also invites comment on whether such filings should utilize a web form, i.e., an interactive form on the Commission's website designed to receive and transfer information to a publicly available Commission database. What are the costs and benefits of requiring video programmers to file contact information with the Commission? Should the Commission require video programmers to provide the same contact information as is currently required of VPDs by its existing rules? Do video programmers generally have a designated person available to handle immediate closed captioning concerns, and if not, what benefits and burdens would result from a requirement that programmers designate such a person? Is there additional information beyond that required of VPDs that the Commission should require video programmers to file? Should video programmers also be required to place the contact information on their websites, if they have a website, or to provide the information in some other way for added access by the public?

3. The Commission also seeks comment on whether it should alter its requirements regarding certifications by video programmers as to their compliance with rules on the provision and quality of closed captioning, if the Commission decides to extend some responsibilities for compliance with its closed captioning rules to video programmers. 47 CFR 79.1(j)(1) requires VPDs to exercise best efforts to obtain a certification from each video programmer from which the VPD obtains programming stating (i) that the video programmer's programming satisfies the required caption quality standards; (ii) that in the ordinary course of business, the video programmer adopts and follows the Best Practices in captioning its programming; or (iii) that the video programmer is exempt from the closed captioning rules, under one or more properly obtained and specified exemptions. The Commission seeks comment on whether it should amend 47 CFR 79.1(j)(1) to require video programmers to file their certifications on captioning quality with the Commission, or whether the Commission should require them to make such

certifications widely available through other means. Should the Commission additionally modify the Video Programmer Best Practices' certification procedures set forth in 47 CFR 79.1(k)(1)(iv) to make filing certifications with the Commission part of the video programmers' best practices? Why should the Commission change its position and require video programmer certifications to be filed with the Commission rather than making such certifications widely available through other means? What are the benefits and costs of requiring the certifications mandated by 47 CFR 79.1(j)(1) and 47 CFR 79.1(k)(1)(iv) to be filed with the Commission? What would be the expected volume of such video programmer certifications on captioning quality? Would requiring video programmers to file these certifications with the Commission assist VPDs, consumers and the Commission in locating the certifications, in addition to providing video programmers with a convenient means of making their certifications widely available?

4. The Commission further seeks comment on whether it should otherwise amend its rules regarding certifications for the provision of closed captioning. Currently, 47 CFR 79.1(g)(6) allows VPDs to rely upon certifications from "programming suppliers" to demonstrate compliance with the Commission's rules for the provision of closed captioning. According to 47 CFR 79.1(g)(6), "programming supplier" includes "programming producers, programming owners, networks, syndicators and other distributors" (emphasis added). If the Commission retains 47 CFR 79.1(g)(6) in some form, either as a separate rule or incorporated into another rule, should the Commission amend the rule to replace the term "programming supplier" with the term "video programmer"? The Commission notes that unlike the term "programming supplier," the term "video programmer" does not include VPDs. Rather, the term "video programmer" is defined as "any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming." Is this rule amendment necessary to help differentiate the responsibilities of regulated entities, if the Commission were to decide to impose some obligations directly on video programmers? The term "programming supplier" also is used in 47 CFR 79.1(e)(6). Should the use of the term in 47 CFR 79.1(e)(6) be replaced to be consistent with any changes

to 47 CFR 79.1(g)(6) or its successor rule? Are there other subsections contained within 47 CFR 79.1 in which the term “programming supplier” should be replaced with “video programmer”?

5. Further, although 47 CFR 79.1(g)(6) allows VPDs to rely upon certifications from programming suppliers, it does not require programming suppliers to provide such certifications. Should the Commission amend 47 CFR 79.1(g)(6) to require programming suppliers or video programmers to file certifications with the Commission certifying that they are in compliance with the Commission’s rules for the provision of closed captioning? The Commission currently does not require such certifications from either VPDs or video programmers. Is there a reason why the Commission should change its approach? If a programming supplier or video programmer claims that it is exempt from providing closed captioning, should the Commission require it to specify the exemption it claims as part of the certification? As an alternative to amending 47 CFR 79.1(g)(6), should the Commission include within 47 CFR 79.1(j)(1) or 47 CFR 79.1(k)(1)(iv) certification language to the effect that the video programmer is in compliance with the Commission’s rules for the provision of closed captioning? What are the benefits and costs of requiring programming suppliers or video programmers to provide such certification? Would such certification help to ensure programming supplier or video programmer compliance with the Commission’s rules requiring the provision of closed captioning? If so, how?

6. If the Commission requires video programmers to file certifications regarding the provision and quality of closed captioning with the Commission, should the Commission require each VPD, when arranging to carry a video programmer’s programming, to alert the video programmer to the requirement to register with and provide certification to the Commission? Once a VPD alerts a video programmer of any such requirement and a video programmer fails to provide a certification to the Commission, should that video programmer be solely responsible for failing to comply with Commission rules? Or, alternatively, should the Commission task VPDs with monitoring video programmers’ compliance with a certification requirement and require them to report to the Commission any failure by a video programmer to comply? Would placing such an obligation on VPDs be inconsistent with the approach of shifting certain responsibilities in the areas of closed captioning from VPDs to video

programmers? What would be the costs and benefits of these requirements? The Commission seeks comment on these and any other matters relating to VPDs' obligations pertaining to such certifications. Is there any reason that the Commission would not have statutory authority to impose the requirements proposed in this and other paragraphs of FCC 14-206?

## **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

7. As required by the Regulatory Flexibility Act (RFA) of 1980, as amended, this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Public Notice has been prepared. An IRFA was previously included with the Further Notice in the Closed Captioning Quality Order. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on document FCC 14-206. The Commission will send a copy of document FCC 14-206, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").

8. In the Further Notice, the Commission sought comment on extending some of the responsibilities for complying with its rules regarding the provision and quality of closed captioning on television beyond VPDs to other entities involved in the production and delivery of video programming. The Commission also sought comment on adopting a burden-shifting approach for complaint resolution that would require both VPDs and video programmers to be involved in the resolution of consumer complaints. Further, the Commission asked whether 47 CFR 79.1(g)(6), which permits VPDs to rely on certifications from programming suppliers to demonstrate compliance with the Commission's captioning requirements, should be eliminated if the Commission were to reapportion responsibility for compliance with the Commission's television closed captioning rules, and more generally whether other changes to its rules would be appropriate if the Commission decides to impose some obligations directly on programming entities other than VPDs.

9. In response to the Further Notice, some commenters have raised concerns regarding the ability of VPDs and consumers to locate the correct contact information for video programmers for the

resolution of closed captioning complaints, should the Commission decide to extend to video programmers some of the responsibilities for compliance with its closed captioning rules and for the resolution of captioning complaints. Several have proposed requiring video programmers to file contact information with the Commission for inclusion in a database. The Commission is therefore inviting comment on whether such contact information should be filed, and if so, whether such filings should utilize a web form.

10. 47 CFR 79.1(g)(6) allows VPDs to rely on certifications from video programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance with the Commission's rules for the provision of closed captioning. 47 CFR 79.1(j)(1) requires VPDs to exercise best efforts to obtain a certification from each video programmer from which the VPD obtains programming stating (i) that the video programmers' programming satisfies the required caption quality standards, (ii) that in the ordinary course of business, the video programmers adopt and follow the Best Practices in captioning its programming, or (iii) that the video programmers are exempt from the closed captioning rules, under one or more properly attained, specified exemptions.

11. One commenter on the Further Notice suggests that the Commission require video programmers to file certifications pursuant to 47 CFR 79.1(g)(6) and 47 CFR 79.1(j)(1) with the Commission, rather than providing them to the VPD (in the case of 47 CFR 79.1(g)(6)) or making them widely available (in the case of 47 CFR 79.1(j)(1)). The Commission is inviting comment on whether the Commission should amend 47 CFR 79.1(j)(1) to require video programmers to file certifications on captioning quality with the Commission, or whether the Commission should require video programmers to make such certifications widely available through other means. The Commission specifically asks for comment on whether requiring video programmers to file these certifications with the Commission would assist VPDs, consumers and the Commission in locating the certifications, in addition to providing video programmers with a convenient means of making their certifications widely available.



12. The Commission is also inviting comment on whether the Commission should amend other Commission rules regarding certifications for the provision of closed captioning. Although 47 CFR 79.1(g)(6) allows VPDs to rely upon certifications from programming suppliers, it does not require programming suppliers to provide such certifications. The Commission is therefore asking whether it should amend 47 CFR 79.1(g)(6) to require video programmers to file certifications with the Commission certifying that they are in compliance with the Commission's rules for the provision of closed captioning. Alternatively, the Commission is asking whether it should include within 47 CFR 79.1(j)(1) or 47 CFR 79.1(k)(1)(iv) certification language to the effect that the video programmer is in compliance with the Commission's rules for the provision of closed captioning. The Commission also seeks comment on whether such certification would help to ensure video programmer compliance with the Commission's rules requiring the provision of closed captioning.

13. Additionally, the Commission is seeking comment on whether it should require each VPD, when arranging to carry a video programmer's programming, to alert the video programmer to the requirement to register with and provide certification to the Commission, and whether the VPD should be required to report to the Commission any video programmers that have failed to do so.

14. The authority for this proposed rulemaking is contained in sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613.

15. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission's action may, over time, affect small entities that are not easily categorized at present. The

Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

17. Cable Television Distribution Services. These services have been included within the broad economic census category of Wired Telecommunications Carriers, which is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. To gauge small business prevalence for the Cable Television Distribution service, the Commission relies on data from the U.S. Census Bureau for the year 2007, the most recent year currently available. According to that source, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Thus, under this category and the associated small business size standard, the vast majority of firms can be considered small.

18. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there are 1,100 cable companies. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this second size standard, most cable systems are small.

19. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There were approximately 56.4 million incumbent cable video subscribers in the United States as of 2012. Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that all but 10 incumbent cable operators are small under this size standard. The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline firms.

Under this category, the SBA deems a Wired Telecommunications Carrier to be small if it has 1,500 or fewer employees. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

21. Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service.

Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross

revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

22. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. These services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." The SBA has developed a small business size standard for this category, which is all such businesses having 1,500 or fewer employees. Census Bureau data for 2007, the most recent year currently available, shows that there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Therefore, under this size standard, the Commission estimates that the majority of these businesses can be considered small entities. In addition to Census Bureau data, the Commission's internal records indicate that as of September 2012, there are 2,239 active EBS licenses. The Commission estimates that of these 2,239 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

23. Open Video Services. Open Video Service (OVS) systems provide subscription services. The OVS framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Although some entities have filed for certifications to operate OVS systems, the Commission believes that most OVS subscribers are included in cable multichannel video programming distributor (MVPD) subscriber data and the Commission does not have a way to count them separately. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data from the U.S. Census for the year 2007, the most recent year currently available. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.

24. Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than \$35.5 million in annual receipts. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.” The Commission has estimated the number of licensed full power commercial television stations to be 1,388. To gauge the number of broadcast stations that are owned by small businesses, the Commission relies on data from the U.S. Census for the year 2007, the most recent year currently available. According to that source, there were 2,076 television broadcasting establishments in 2007. Of these, 1,515 establishments had receipts under \$10 million, and 561 had receipts of \$10 million or more. However, as to the latter 561 there is no data available that shows how many had receipts in excess of \$35.5 million. Based on this data, the majority of these establishments can be considered small. The Commission notes, however, that, in

assessing whether a business concern qualifies as small under the above definition, business control affiliations must be included. Because many of these stations may be held by large group owners, and the revenue figures on which the Commission's estimate is based does not include or aggregate revenues from control affiliates, the Commission's estimate likely overstates the number of small entities that might be affected by its action.

25. The Commission has estimated the number of licensed noncommercial educational (NCE) full power television stations to be 396. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 428 Class A television stations and 1,986 low power television stations (LPTV). Given the nature of these services, the Commission will presume that all Class A television and LPTV licensees qualify as small entities under the SBA definition, even though a number of these stations may be owned by entities that do not qualify as small entities.

26. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimates of small businesses to which they apply may be over-inclusive to this extent.

27. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for ILECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field

of operation because any such dominance is not “national” in scope. The Commission has therefore included small ILECs in the RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

28. Census Bureau data for 2007, the most recent year currently available, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of ILEC services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of ILEC service are small entities that may be affected by the rules and policies adopted. The Commission estimates that three large ILECs, each of whom employ more than 1,500 people, currently provide video programming.

29. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, the most recent year currently available, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 employees or more. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either CLEC services or CAP services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Seventy-two carriers have reported that they are Other Local Service Providers, and of the 72, 70 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, most CLECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.



30. Electric Power Distribution Companies. These entities can provide video services over power lines (BPL). The Census Bureau defines Electric Power Distribution companies as “electric power establishments primarily engaged in either (1) operating electric power distribution systems (i.e., consisting of lines, poles, meters, and wiring) or (2) operating as electric power brokers or agents that arrange the sale of electricity via power distribution systems operated by others.” These types of MVPDs serve few subscribers and their subscriber base is declining. To gauge small business prevalence in the Electric Power Distribution category, the Commission relies on data from the U.S. Census Bureau for the year 2007, the most recent year currently available. The SBA has developed a small business size standard for this category, which is all such firms having 1,000 or fewer employees. Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees. Based on this data, a majority of these firms can be considered small.

31. Cable and Other Subscription Programming. These entities may be directly or indirectly affected by the Commission’s action. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.” To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data from the U.S. Census Bureau for the year 2007, the most recent year currently available. The size standard established by the SBA for this business category is that annual receipts of \$35.5 million or less determine that a business is small. According to 2007 Census Bureau data, there were 396 firms that were engaged in production of Cable and Other Subscription Programming. Of these, 349 had annual receipts below \$25 million, 12 had annual receipts ranging from \$25 million to \$49,999,999, and 35 had annual receipts of \$50 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

32. Motion Picture and Video Production. These entities may be directly or indirectly affected by the Commission's action. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." The Commission notes that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for VPDs. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data from the U.S. Census Bureau for the year 2007, the most recent year currently available. The size standard established by the SBA for this business category is that annual receipts of \$30 million or less determine that a business is small. According to 2007 Census Bureau data, there were 9,095 firms that were engaged in Motion Picture and Video Production. Of these, 8,995 had annual receipts of less than \$25 million, 43 had annual receipts ranging from \$25 million to \$49,999,999, and 57 had annual receipts of \$50 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

33. Internet Publishing and Broadcasting and Web Search Portals. These entities may be indirectly affected by the Commission's action. The Census Bureau defines this category to include "establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users."

34. In this category, the SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. For this

category of manufacturers, Census Bureau data for 2007, the most recent year currently available, show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees, and 23 had 500 or more employees. Accordingly, the majority of establishments in this category can be considered small under that standard.

35. Certain rule changes proposed in FCC 14-206, if adopted by the Commission, would modify rules or add requirements governing reporting, recordkeeping and other compliance obligations.

36. If the Commission were to adopt rules requiring video programmers to register and file contact information with the Commission or to make such contact information widely available through other means, such regulations would impose new reporting and recordkeeping obligations on video programmers, video programming owners, and other entities, including small entities.

37. If the Commission were to adopt rules requiring video programmers to file certifications with the Commission regarding compliance with the Commission's rules on the provisioning and quality of closed captioning, such regulations would impose different reporting and recordkeeping obligations than currently required on video programmers, video programming owners, and other entities, including small entities.

38. If the Commission were to adopt rules requiring each VPD, when arranging to carry a video programmer's programming, to alert the video programmer of the requirement to provide certification to the Commission and to report to the Commission any video programmers that have failed to do so, such regulations would impose different reporting and recordkeeping obligations than currently required on VPDs, video programmers, video programming owners, and other entities, including small entities.

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. If the Commission were to adopt rules requiring video programmers to register and file contact information with the Commission or to make such contact information widely available through other means, such regulations would impose new reporting and recordkeeping obligations on video programmers, video programming owners, and other entities, including small entities. However, the proposed requirement takes into consideration the impact on small entities. The filing of contact information is a simple task that should take no more than a few minutes. In addition, such requirements may benefit other entities, such as VPDs and consumers, who would be able to search the registration information for contact information, thereby enabling them to more readily contact video programmers who can address their closed captioning concerns.

41. If the Commission were to adopt rules requiring video programmers to file certifications with the Commission regarding compliance with the Commission's rules on the provisioning and quality of closed captioning, such regulations would impose different reporting and recordkeeping obligations than currently required on video programmers, video programming owners, and other entities, including small entities. The proposed rules would not impose additional burdens on such entities, because video programmers are already required to provide certifications to VPDs and to make such certifications widely available under the Commission's rules. See 47 CFR 79.1(j)(1) and (k)(1)(iv); see also 47 CFR 79.1(g)(6). The proposed rule may ease the burden on video programmers, because video programmers would know to go directly to the Commission's website to provide certification and would not need to determine how to make such certification widely available, and the proposed rules would ease the burden on VPDs and consumers by having all certifications in one easy to find place.

42. If the Commission were to adopt rules requiring each VPD, when arranging to carry a video programmer's programming, to alert the video programmer of the requirement to provide certification to the Commission and to report to the Commission any video programmers that have failed

to do so, such regulations would impose different reporting and recordkeeping obligations than currently required on VPDs, video programmers, video programming owners, and other entities, including small entities. The proposed rules would not impose additional burdens on such entities, because VPDs who are unable to locate certifications on widely available sources are already required to alert video programmers of the requirement and report such noncompliance to the Commission. See 47 CFR 79.1(j)(1). The proposed rule may ease the burden on VPDs, because VPDs would be able to go directly to the Commission's website to confirm whether the video programmer has registered and certified, which may be easier than having to determine on which website or other widely available place the information appears.

43. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.

None.

**ORDERING CLAUSES**

44. Pursuant to sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, document FCC 14-206 IS ADOPTED.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 14-206 including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION.

Sheryl D. Todd,  
Deputy Secretary.